

Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

Subchapter A. Motion Picture Investor Tax Credit Program

§1601. Purpose

A. The purpose of this Chapter is to implement the Motion Picture Investor Tax Credit Program as established by R.S. 47:6007.

B. This Chapter shall be administered to achieve the following:

1. to encourage development of a strong capital and infrastructure base within the state for the motion picture and related industries;

2. to achieve a self-supporting, independent, indigenous industry; and

3. to encourage development of state of the art motion picture production and post-production facilities:

a. in the short-term, to attract private investors in state-certified productions and state-certified infrastructure projects;

b. in the long-term, to encourage the development of a skilled state workforce trained in the film and video industry.

C. This Chapter shall apply to any person:

1. claiming a credit;
2. transferring or selling a credit; or
3. acquiring a credit under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:52 (January 2010).

§1603. General Description

A. The program offers two distinctive incentives: production and infrastructure.

1. Production

a. If the total base investment exceeds \$300,000, each investor shall be allowed a tax credit based upon their investment as follows:

i. for state-certified productions initially certified on or after January 1, 2004, but before January 1, 2006:

(a) a 10 percent tax credit, if the total base investment is more than \$300,000 and less than \$8,000,000;

(b) a 15 percent tax credit, if the total base investment is more than \$8,000,000.

ii. a 25 percent tax credit for state-certified productions initially certified on or after January 1, 2006, but before July 1, 2009;

iii. a 30 percent tax credit for state-certified productions initially certified on or after July 1, 2009.

b. An additional payroll tax credit shall be allowed for any base investment expended on behalf of employing Louisiana residents on state-certified productions as follows:

i. a 10 percent tax credit for state-certified productions initially certified before July 1, 2009; or

ii. a 5 percent payroll tax credit for state-certified productions initially certified on or after July 1, 2009.

2. Infrastructure

a. If the total base investment exceeds \$300,000, each investor shall be allowed a tax credit based upon their investment as follows:

i. a 40 percent tax credit for state-certified infrastructure projects, for which applications for initial certification were received by the office and the department prior to January 1, 2009:

(a). for applications received before August 1, 2007, there shall be no per project cap on tax credits, except as otherwise provided by the terms of the initial certification;

(b). for applications received after August 1, 2007, the total tax credit allowed for a state-certified infrastructure project shall not exceed \$25,000,000 per project.

B. Investor tax credits shall be transferable under the following conditions.

1. Tax credit shall be earned by investors at the time expenditures are made in a state-certified production or state-certified infrastructure project.

2. Credits become transferable only after final certification of expenditures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:53 (January 2010).

§1605. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6007, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Allocatee—an individual or entity that received an allocation of investment tax credits.

Allocator—an individual or entity that makes an allocation of investment tax credits.

Base Investment—cash or cash equivalent investment made and used for:

- a. production expenditures in the state for a state-certified production;
- b. infrastructure expenditures in the state for the development of a state-certified infrastructure project. Infrastructure Expenditures shall include, but are not limited to, expenditures for infrastructure project development, film and television production spaces, post-production equipment, facilities, equipment for distribution companies domiciled within Louisiana, transportation equipment, land acquisition and closing costs, construction costs, design and professional consulting fees associated with the state-certified infrastructure project, furniture, fixtures, equipment, and financing costs. Infrastructure expenditures shall not include indirect costs, any amounts that are later reimbursed by a third party, any costs related to the allocation or transfer of tax credits, any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the state-certified Infrastructure Project.

Begin Construction—for projects with applications filed after August 1, 2007, construction of an infrastructure project shall begin when:

- a. in the case of a new building, either:
 - i. materials to be used in the project, worth more than 5 percent of the construction budget, are placed at the project site; or
 - ii. other work is performed on the site which is visible from a simple inspection and reasonably indicates that the work has begun, such as substantial land fill, soil reinforcement or pouring of a foundation. The following are examples of services which do not indicate that work has begun; services of surveyors or engineers; cutting or removal of trees; demolition of existing structures or clearing of the land surface;
- b. in the case of a retrofit project to an existing structure:
 - i. materials to be used in the project, worth more than 10 percent of the construction budget, are placed at the project site; or
 - ii. equipment to be used in the project, worth more than 20 percent of the construction budget, is placed and operational at the project site.

Commencement of Production—beginning principal photography or equivalent process.

Commissioner—Commissioner of Administration.

Department—Louisiana Department of Economic Development, or its successor.

Developer—a person responsible for the development of a state-certification infrastructure project.

Director—Director of the Office of Entertainment Industry Development (the office).

Division—Division of Administration.

Expended in the State—

- a. an expenditure to lease immovable property located in the state;
- b. an expenditure as compensation for services performed in the state; or
- c. an expenditure to purchase or lease tangible personal property within the state where the transaction is subject to the state sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950:
 - i. a transaction that is subject to the states sales or lease tax provision of Title 47 of the Louisiana Revised Statutes of 1950 shall include transactions that are also subject to statutory exclusion or exemption.

Expenditure—actual payment of cash or cash equivalent, paid by or on behalf of a state certified production or state-certified infrastructure project, exchanged for goods or services, as evidenced by an invoice, receipt or other such document.

Indirect Costs—costs of operation that are not directly associated with a specific production or infrastructure project, such as clerical salaries, general administrative costs and other overhead charges.

Louisiana Resident, Resident, or Resident of Louisiana—a natural person domiciled in the state of Louisiana. Domicile may be established:

- a. by maintaining a permanent place of abode within the state and spending in the aggregate more than six months of each year in the state; or
- b. by agreeing in writing to file a Form IT 540 or Form IT 540B as applicable, for the taxable year employed by the motion picture production company, provided the person subsequently files the form and pays any Louisiana income tax due.

Non-Applicable Production Expenditures—the following expenses are not eligible to earn tax credits:

- a. expenditures for marketing and distribution;
- b. non-production related overhead;
- c. amounts reimbursed by the state or any other governmental entity;
- d. costs related to the transfer of tax credits;
- e. amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production;
- f. the application fee;
- g. state or local taxes;

h. any other expenditure not allowed by law or regulation.

Office—Office of Entertainment Industry Development.

Payroll—all salary, wages and other compensation, including benefits paid to an employee and taxable in this state. However, payroll for purposes of the additional tax credit for Louisiana-resident payroll shall exclude any portion of an individual salary in excess of one-million dollars.

Person—there are two kinds of persons; natural and juridical.

a. A natural person is a human being.

b. A juridical person is an entity to which the law attributes personality, such as a corporation, partnership or limited liability company.

Production Expenditures—preproduction, production and postproduction expenditures directly incurred in this state that are directly used in a state-certified production, whether the production company directly contracts or subcontracts such work, including without limitation the following:

a. set construction and operation;

b. wardrobes, make-up, accessories, and related services;

c. costs associated with photography and sound synchronization, lighting, and related services and materials;

d. editing and related services;

e. rental of facilities and equipment;

f. leasing of vehicles;

g. costs of food and lodging;

h. digital or tape editing, film processing, transfer of film to tape or digital format, sound mixing, special and visual effects (if services are performed in Louisiana);

i. total aggregate payroll (limited to the amount of total payroll expended in Louisiana and which is taxable to the recipient in Louisiana. A Louisiana tax return is required to be filed reflecting the amount of compensation paid while the recipient is located in Louisiana. If the recipient is not a Louisiana resident, then a non-resident income tax return should be filed);

j. music, if performed, composed or recorded by a Louisiana resident, or released or published by a Louisiana-domiciled and headquartered company;

k. airfare, if purchased through a;

l. insurance costs or bonding, if purchased through a Louisiana company;

m. payments to a loan-out or personal services corporation for the services of an out-of-state hire are allowed as long as the services are performed in Louisiana on a state certified production;

n. cost of the independent audit.

Production Facility—a physical facility that provides the goods or services necessary for completing the major activities of motion picture production.

Secretary—Secretary of the Department of Economic Development.

Source within the State—a physical facility in Louisiana, operating with posted business hours and employing at least one full-time equivalent employee.

State-Certified Infrastructure Project—shall mean a film, video, television, and digital production and postproduction facility, and movable and immovable property and equipment related thereto, or any other facility which supports and is a necessary component of such proposed state-certified infrastructure project, all as determined and approved by the office, the Secretary of the Department of Economic Development, and the Division of Administration under such terms and conditions as are authorized by this Section. The term *infrastructure project* shall not include movie theaters or other commercial exhibition facilities.

State-Certified Production—a production approved by the office and the secretary which is produced by a motion picture production company domiciled and headquartered in Louisiana and which has a viable multi-market commercial distribution plan.

Transferee—an individual or entity that receives a transfer of investor tax credits.

Transferor—an individual or entity that makes a transfer of an investor tax credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:53 (January 2010).

§1607. Certification Procedures

A. Application

1. An application for initial certification shall be submitted with an application fee payable to the Office, as required by R.S. 47:6007(D)(2)(b).

a. All applications shall include information as required by R.S. 47:6007(D)(2)(a).

b. In addition, the following program specific information is required.

i. Production:

(a). working title of the production. Should the title change, the state-certified production needs to inform the office as soon as that change is made;

(b). name of the requesting production company;

(c). name, telephone number, e-mail address and attesting signature of the requesting production company's contact person;

(d). approximate beginning and ending date of production in Louisiana;

(e). Louisiana office address;

(f). telephone number of requesting company's Louisiana office address;

(g). estimated total production-related costs of production;

(h). estimated total amount of production-related costs to be expended in Louisiana;

(i). estimated total payroll to be paid by the requesting production company to Louisiana residents employed by the requesting production company in connection with the production;

(j). a preliminary budget including the estimated Louisiana payroll and estimated in-state investment;

(k). a copy of script (including synopsis) will be made available to OEID and subsequently returned to the applicant;

(l). list of principal creative elements such as principal cast, producer, and director; and

(m). facts sufficient for the office and the department to determine each of the following:

(i). that the requesting production company is a motion picture production company as defined in R.S. 47:6007(B)(6);

(ii). that the requesting production company is domiciled and headquartered in Louisiana; and

(iii). that the requesting production company has either a viable multi market distribution plan or a signed distribution agreement with either a major theatrical exhibitor, television network or cable television programmer for distribution of the production.

ii. Infrastructure:

(a). working name of the infrastructure project;

(b). name of the requesting infrastructure company;

(c). name, telephone number, e-mail address and attesting signature of the requesting infrastructure company's contact person;

(d). approximate beginning and ending date of construction in Louisiana;

(e). Louisiana office address;

(f). telephone number of requesting company's Louisiana office address;

(g). estimated total project-related costs or total costs associated with the infrastructure project;

(h). a preliminary operating budget including the estimated Louisiana payroll and estimated in-state investment;

(i). a detailed business plan outlining the exact proposed costs;

(j). total number of jobs to be created by the infrastructure project.

B. Qualification. The office and the secretary, and in the case of infrastructure projects, the division, shall determine whether a production or infrastructure project qualifies for certification, by meeting all requirements of R.S. 47:6007 and these regulations, and taking the following factors into consideration:

1. the impact of the production or infrastructure project on the immediate and long-term objectives of R.S. 47:6007;

2. the impact of the production or infrastructure project on the employment of Louisiana residents;

3. the impact of the production or infrastructure project on the overall economy of the state.

C. Initial Certification

1. After review and upon a determination of qualification, initial certification will be issued as follows.

a. Production

i. The office and the department shall issue an initial certification letter to the applicant, verifying the status of the production as a state certified production.

b. Infrastructure

i. The office, the department and the division shall issue an initial certification letter to the applicant, verifying the status of the project as a state certified infrastructure project.

2. Additional information may be requested by the office, the department and/or the division in order to make a determination of eligibility for the program.

3. Initial certifications shall be issued in the amount determined to be eligible, and:

a. shall contain a unique identifying number for each production or project;

b. may require state-certified productions to display an animated state brand or logo as a condition for receiving tax credits.

4. Duration of Effect

a. Once an initial certificate is issued by the office, the department (and the division where appropriate), the applicant or official representative must countersign and return an original to the office, within 30 business days, acknowledging initial certification status.

b. For productions, initial certification shall be effective for a period 12 months prior to and 12 months after

the date of initial certification, unless the production has commenced, in which case the initial certification shall be valid until the production is completed.

D. Final Certification; Audit Requirements

1. Prior to any final certification of credits, the motion picture production company applicant shall submit to the office a notarized statement demonstrating conformity with and agreeing to the following:

a. to pay all undisputed legal obligations incurred in the state;

b. to publish upon completion of principal photography a notice at least once a week for three consecutive weeks in local newspapers in regions where filming has taken place, notifying creditors to file any claims within a specific date;

c. that the outstanding obligations are not waived should a creditor fail to file by the specific date;

d. to delay any claims for credits until the office delivers written notice to the Secretary of the Department of Revenue that the production company has fulfilled all requirements for the credit.

2. When requesting final certification of credits, the motion picture production company or infrastructure project applicant shall submit to the office the following:

a. a cost report, certified by a state licensed, independent certified public accountant and complying with the minimum standards as required by R.S. 47:6007(D)(2)(d). The cost report may be subject to additional audit by the department, the division, or the Department of Revenue, at the applicant's expense.

i. **Incorrect Reporting.** If an applicant submits a cost report required by the provisions of this Chapter and the report made and filed contains material misstatements, including but not limited to misrepresentation in or intentional omission from the cost report of events, transactions, or other significant information there may be cause for an additional audit.

ii. **Related Party Transactions.** If an audit contains related party transactions in excess of 20 percent of the total expenditures reported in the submitted audit there may be cause for an additional audit.

iii. **Reimbursement of Audit Costs.** The department may undertake additional audit at the applicant's expense, to be performed by a state certified public accountant also certified in financial forensics or also certified as a fraud examiner. Audit fees will be assessed at the department's contracted fee, with a minimum of \$2,000 and a maximum of \$15,000 fee per audit.

b. additional information as may be requested.

3. After review and upon a determination of qualification, a final tax credit certification letter indicating the amount of tax credits certified for the production or infrastructure project will be issued by the director, the

secretary (or his designee) and also in the case of infrastructure projects, the commissioner.

4. Multiple requests for final certification may be submitted.

a. Each submission must be accompanied by an audited cost report indicating expenditures.

b. Two submissions shall be certified at no additional fee by the office.

c. Additional charges may apply for three or more certification requests.

E. **Appeal Process.** In the event that an application for initial or final certification is denied:

1. the office shall promptly provide written notice of such denial to the Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means;

2. the applicant may appeal as follows:

a. an applicant may appeal within 30 days from receipt of a denial. Receipt will be conclusively presumed from the sending of the denial by electronic mail to an address provided by the applicant or by a return receipt evidencing delivery by U.S. Postal Service or private carrier;

b. the appeal is made by delivery of a written objection, with supporting documentation to the secretary and also in the case of infrastructure projects to the commissioner;

c. within 30 days of receipt of a timely appeal, the secretary (or his designee) and the commissioner, where applicable, will review the appeal, and issue a joint written determination. The secretary and the commissioner may extend the time for the determination for an additional 30 days. In the event the secretary and the commissioner do not agree, or fail to issue a determination within the required time, the appeal is deemed denied;

d. the written determination shall be the final agency decision of the department, and the division where applicable;

e. the applicant may appeal an adverse decision to the Nineteenth Judicial District Court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:55 (January 2010), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 37:514 (February 2011).

§1609. Additional Program Provisions—Production

A. Payroll Tax Credit

1. To the extent base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production:

a. for state-certified productions initially certified before July 1, 2009, each investor shall be allowed an additional tax credit of 10 percent of such payroll;

b. for state-certified productions initially certified after July 1, 2009, each investor shall be allowed an additional tax credit of 5 percent of such payroll.

2. However, if the payroll to any one person exceeds \$1,000,000, this additional credit shall exclude any salary for that person in excess of \$1,000,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:56 (January 2010).

§1611. Additional Program Provisions—Infrastructure

A. Tax credits may be granted only for infrastructure projects directly related to the acquisition and construction of a film, video, television, or video production or postproduction facility and shall not apply to any infrastructure project such as a hotel or lodging facility, golf course, or retail shopping facility or other facility which the department and the division deem unrelated to such purposes.

1. If an infrastructure project may be used for other purposes unrelated to the production or postproduction activities, tax credits may be granted for that portion of the project that is deemed by the department and the division to be necessary to support or secure production or postproduction activities.

2. In the case of immovable assets deemed related, an applicant must provide assurances that:

a. such assets will exclusively support the initially certified film infrastructure project; and

b. that the applicant will not divert the use of the assets to purposes that do not promote or provide for the productions within the state of Louisiana.

3. In the case of movable assets deemed related, an applicant must provide assurances that:

a. the moveable assets shall remain in Louisiana, for as long as specified in any agreements pursuant to §1611.A.4 below;

b. be used in the production of motion pictures or other visual media productions within the state of Louisiana; and

c. used for not less than 80 percent of the asset's useful life.

4. Assurances may be secured by appropriate agreements, including, but not limited to the following terms and conditions:

a. a requirement of approval prior to sale of such assets;

b. a requirement for a minimum number of years before such assets may be transferred to a different owner;

c. limitations on transferability of the tax credits for current or future holders;

d. a reserve fund that may be re-captured by the state; and/or

e. a structured release of tax credits.

5. Any conditions to meet the requirements of this Subsection shall be explicitly stated in the initial certification issued for the project.

a. In the event an applicant fails to meet the conditions, as specified in the certification letter, any such acts, omissions or failures shall constitute a default, and the office shall retain all rights to modify the terms and conditions of the certification, and to reclaim disbursed credits in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless the office has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

B. For infrastructure applications received prior to August 1, 2007:

1. the applicant shall have 24 months from the date of approval of the rules or January 1, 2008, whichever is earlier, in which to qualify for the 40 percent tax credits earned on expenditures;

2. a minimum of 20 percent or \$10,000,000 of the total base investment (as provided for in the initial certification) that is unique to film production infrastructure shall be expended before any infrastructure tax credits can be earned.

3. payment of tax credits earned may be structured over the course of two or more tax years, and may be made after the year expenditures are made, as provided for in the initial certification.

C. For infrastructure applications received after August 1, 2007 and before January 1, 2009:

1. the tax credit shall be 40 percent of the base investment expended in this state on projects, provided that:

a. the total base investment expended in this state, exceeds \$300,000;

b. the total tax credit allowed shall not exceed \$25,000,000;

2. if all or a portion of an infrastructure project is a facility which may be used for other purposes unrelated to production or postproduction activities, then no tax credits shall be earned on such multiple-use facilities until the production or postproduction facility is complete;

3. construction of the infrastructure project shall begin within six months of the preliminary certification;

4. credits may not be earned until 25 percent of the total base investment, provided for in the preliminary certification of an infrastructure project, has been certified as expended;

5. no tax credit shall be allowed for expenditures made for any infrastructure project after December 31, 2008, unless 50 percent of the total base investment provided for in the initial certification of the project has been expended prior to that date. The expenditures may be finally certified at a later date;

a. transactions qualifying toward the 50 percent expenditure requirement include, but are not limited to, an arm's length transaction in which the obligation is secured by the subject of the transaction and the maturity date for such obligation occurs after December 31, 2008, if such transaction was executed on or before December 31, 2008. However, such transactions shall not qualify to earn tax credits, or otherwise be deemed to be expenditures, until actual payments are made and the transaction meets the definition of *expenditure* provided in §1605.B above;

6. expenditures shall be certified by the department, office and division and credits are not transferable until such certification;

7. for purposes of allowing tax credits against state income tax liability and transferability of the tax credits, the tax credits shall be deemed earned at the time expenditures are made, provided that all requirements of this Subsection have been met and after the tax credits have been certified;

8. the department, office and division may require the tax credits to be taken and/or transferred in the period in which the credit is earned or may structure the tax credit in the initial certification of the project to provide that only a portion of the tax credit be taken over the course of two or more tax years;

9. the credit shall be allowed against the income tax for the taxable period in which the credit is earned or for the taxable period in which initial certification authorizes the credit to be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1125.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:56 (January 2010).

§1613. Application of the Tax Credit

A. Prior to claiming a tax credit on any tax return, or transferring any tax credit, a person must apply for and obtain a final certification. The investor tax credit may be earned, transferred, allocated, and claimed as follows.

1. Earn. Individuals or entities may earn investor tax credits pursuant to R.S. 47:6007(C)(1).

a. Once tax credits are earned by an individual or entity, such individual or entity and any subsequent transferee, may transfer or allocate the investor tax credits.

2. Transfer. Any motion picture investor tax credits not previously claimed by any taxpayer against its income tax may be transferred or sold to another Louisiana taxpayer or to the office, pursuant to R.S. 47:6007(C)(4).

a. A single transfer or sale may involve one or more transferees. Transferors and transferees shall submit to the Office and to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such credits and shall include a processing fee of two hundred dollars per transferee.

b. If the investor tax credits (evidenced by a certification letter) are transferred to the office:

i. on and after January 1, 2007, and prior to December 31, 2008 the state shall make payment to the investor at a value of 72 percent of the face-value of the credits;

ii. on January 1, 2009, and every second year thereafter, the percent of the value of the tax credits paid by the state shall increase 2 percent until the percentage reaches 80 percent;

iii. for state certified productions which receive initial certification on or after July 1, 2009, the state shall make payment to the investor at a value of 85 percent of the face-value of the credits.

3. Allocate. If the investor tax credits are earned by, or allocated or transferred to, an entity not taxed as a corporation, the entity may allocate the credit by issuing ownership interests to any individuals or other entities on such terms that are agreed to by the relevant parties and in accordance with the terms of the allocating entity's operating agreement or partnership agreement. These terms may result in the allocation of up to 100 percent of the investor tax credits to any individual or entity regardless of the federal tax treatment of the allocation:

a. the allocating entity:

i. may be treated as a partnership for federal or state tax purposes; or

ii. may be treated as an entity that is disregarded as an entity separate from its owners for federal or state tax purposes, and in which case, each holder may agree that it will not treat the allocating entity as a partnership or itself as a partner or the ownership interest in the allocating entity as a partnership interest for federal tax or state tax purposes.

4. Claim. Tax credits may be claimed as follows:

a. an owner of tax credits may apply the credits to offset an outstanding Louisiana income tax liability for any tax year beginning in the year that the investor initially earned the tax credit or in any year thereafter within the 10 year carry forward period;

b. in the case of tax credits owned (held) by an entity not taxed as a corporation, the credits shall be deemed to flow through or be allocated to partners or members at the end of the tax year in which the entity acquired the credits unless the partnership or membership agreement provides otherwise;

c. any individual or entity shall be allowed to claim the investor tax credit against its Louisiana income tax liability:

i. whether or not any such individual is a Louisiana resident; and

ii. whether or not any such entity is domiciled in Louisiana, organized under Louisiana law, or headquartered in Louisiana;

d. an investor tax credit, in the hands of the taxpayer that earned the credit or received it by flow-through, cannot be used to eliminate any penalties and interest on overdue income taxes from prior tax years:

i. however, an investor tax credit that is purchased is treated as property and can be applied to penalties and interest on overdue income taxes from prior tax years pursuant to R.S. 47:1675(H)(1)(c):

(a) penalties and interest will continue to accrue until the taxes on which such penalties and interest are accruing are paid;

(b) the date of payment is the date that the Louisiana Department of Revenue receives a return from a taxpayer on which the investor tax credits are claimed.

B. If the investor tax credits (evidenced by a tax credit certification letter) are transferred or allocated as provided herein.

1. The transferor shall submit to the office the original certificate of ownership, evidencing the investor tax credits being transferred or allocated, as required by R.S. 47:6007(C)(5).

2. After receipt, the office may issue to each transferee or allocatee, a certificate of ownership signed by the director reflecting:

a. such transferee's or allocatee's name;

b. the dollar amount of investor tax credits transferred or allocated;

c. the calendar year in which the investor tax credits were originally earned;

d. the state-certified infrastructure project or the state-certified production with respect to which such investor earned the investor tax credits; and

e. the identifying number assigned to such state-certified infrastructure project or state-certified production.

3. If the certificate of ownership submitted evidences more investor tax credits than actually transferred or allocated, then the office may issue an additional certificate

of ownership, reflecting any remaining investor tax credit balance.

4. Any person or entity engaged in the business of buying and reselling tax credits may elect to maintain its certificate of ownership on file with the office, such that it need not surrender, and have reissued, its certificate of ownership each time it sells a tax credit.

a. In such cases, the office may issue comporting certificates of ownership to transferees or allocates, designated by the transferor or allocator in writing, until such time as the tax credits represented in the original certificate have been exhausted.

5. Any taxpayer claiming investor tax credits against its Louisiana income tax liability shall submit to the Department of Revenue, with its Louisiana income tax return for the year in which the taxpayer is claiming the investor tax credits, an original certificate of ownership issued by the office or the transfer notice pursuant to this rule, evidencing the dollar amount of the investor tax credits being claimed.

6. The failure of the office to timely issue a certificate of ownership in accordance with this rule shall not:

a. void or otherwise affect, in any way, the legality or validity of any transfer of investor tax credits;

b. prohibit any Louisiana taxpayer from claiming investor tax credits against its Louisiana income tax liability, if the investor tax credits are otherwise transferred or claimed in accordance with R.S. 47: 6007 and these rules; or

c. result in any recapture, forfeiture or other disallowance of investor tax credits under R.S. 47:6007(E) or (F) or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:57 (January 2010), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 37:515 (February 2011).